

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS, NEVADA

UNITED STATES OF AMERICA,)
) Case 2:11-CR-0430-PMP-GWF
Plaintiff,)
)
vs.)
)
ANN HILTON,)
)
Defendant.) Las Vegas, Nevada
) May 6, 2013
) 2:32:27 p.m.
And related parties and cases)

HEARING ON MOTION AND SENTENCING

THE HONORABLE PHILIP M. PRO PRESIDING
DISTRICT JUDGE OF THE U.S. DISTRICT COURT

COURT RECORDER:

HENRY ENRIQUEZ,
U.S. District Court

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2:11-CR-0430-PMP-GWF U.S. v. Hilton 5/6/13 **Sentencing**

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APPEARANCES:

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FOR THE DEFENDANT: RICHARD F. BOULWARE,
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ALSO PRESENT: KELLI MORGAN,
U.S. Department of Probation

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1 LAS VEGAS, NEVADA

MONDAY, MAY 6, 2013

2 PROCEEDINGS BEGAN AT 2:32:27 P.M.

3 * * * * *

4 THE COURT: Have a seat everybody.

5 All right, we're convened in United States of
6 America versus Ann Hilton, 11-Criminal-430.

7 The record should reflect the presence of the
8 defendant, Ms. Hilton, together with counsel, Richard
9 Boulware. Dan Schiess on behalf of Plaintiff, United States.
10 Kelli Morgan on behalf of the United States Department of
11 Probation.

12 The matter is before the sentence -- before the
13 Court, rather, for sentencing. Also recently filed, at
14 Document 42, was defendant's motion to withdraw a guilty
15 plea. The government responded on May 2nd at Document 45. So
16 perhaps we should address that first before we move forward
17 to address the issue of sentencing.

18 Mr. Boulware, of course, we had continued this
19 previously but go ahead and flush out for me exactly why you
20 think -- and particularly in light of the government's
21 response that the defendant should be permitted to withdraw
22 her guilty plea. I don't see that there's a violation of the
23 plea agreement but maybe you can -- go ahead and raise that
24 up. You know, expound on that for me.

25 MR. BOULWARE: Your Honor, here's my basic -- our

1 basic position. We specifically negotiated the plea, the
2 fact set [sic] on this agreement with the idea, obviously,
3 Your Honor, that there would be no additional facts in the
4 agreement.

5 Now the reason why we cannot put that explicit
6 provision prohibiting that in the agreement is it's contrary
7 to the law. If you read the Ninth Circuit's law it says that
8 if government counsel has asked questions, right, they have
9 to be able to respond. So we cannot tell defendants -- and
10 that's in the cases that I cited, that you explicitly
11 prohibited the government from bringing additional
12 information because that would be contrary to what actually
13 is Ninth Circuit law.

14 THE COURT: But where a defendant is seeking some
15 variation departure from an advisory guideline range, isn't
16 the government within its, not only its rights but its
17 obligation to set forth the facts and response?

18 MR. BOULWARE: Your Honor, I don't think so because
19 if you looked at -- and part of this relates to two issues.
20 One is what was her understanding of our agreement? Your
21 Honor, had I thought that that was our agreement I would have
22 included facts related to relevant conduct which I thought
23 were mitigating with respect to my client. I mean, it's
24 often the case that there are additional facts that we have
25 and we say, well, wait a minute, just because we're pleading

1 guilty, let's look at the facts of what happened here. We
2 don't believe that they were vulnerable victims. We believe
3 those individuals knew what my client's business was. They
4 worked in the business, for example.

5 Those are facts, Your Honor, that I would have
6 brought to Court's attention had I believed that I could
7 actually discuss facts of the offense conduct. If you look
8 at my sentencing memorandum, Your Honor, and the Court has
9 seen different memorandum from me before, I have discussed
10 facts with respect to offense conduct where I thought it was
11 permitted. My sentencing memorandum reflected what I
12 believed that our agreement was, Your Honor, which is that we
13 had to use the relevant facts in the negotiated fact section.
14 That is why I assiduously avoided any discussion whatsoever
15 of any relevant mitigating facts because often there are even
16 in the offense conduct.

17 Your Honor, and part of that reflects, Your Honor,
18 again my understanding of the agreement. I'm not saying that
19 Mr. Schiess necessarily intentionally did that. What I can
20 say to the Court is I negotiated plea agreements for over 10
21 years as a public defender, I've never in a situation where
22 there's a negotiated fact section, Your Honor, where I did
23 not bring up facts, understood that the government could ever
24 bring up additional relative negative conduct that had not
25 been discussed. If that were the case, Your Honor, it would

1 completely negate our agreement as to the fact section.
2 Otherwise there would be no point for me to negotiate a fact
3 section, Your Honor, in this case allowing additional
4 relevant conduct if I thought they could come in and bring
5 additional relevant conduct in the first place.

6 If you look at, again, my memorandum, it reflects I
7 think and confirms, Your Honor, what our understanding was.
8 And, Your Honor, as I've stated in my memoranda, the Ninth
9 Circuit has very clear rules about the term of an agreement
10 if they're ambiguous being construed in favor of the
11 defendant. The fact that in this case, obviously, the
12 drafter of the [unintelligible] the government, the terms
13 are construed against the government. We have specific
14 terms which should trump general terms. And I never thought
15 I'd have a chance to use that but the expressio unius est
16 exclusio alterius construction, Your Honor, that explicitly
17 say, well, we have explicitly identified information that is
18 meant to cover the entirety of the agreement as to the facts.

19 And I went back to look at this, Your Honor. The
20 Ninth Circuit basically said, they can bring in facts where
21 for example, if I had misstated facts, Your Honor -- if I had
22 -- and that's why I didn't put any offense conduct facts in
23 my agreement, Your Honor. I didn't want there to be anything
24 in my memorandum that the government could then use that one
25 clause to trigger its use of additional relevant facts

1 because I'm aware of these facts, Your Honor. It's not like
2 I'm not aware of the fact there's additional relevant
3 conduct. The whole benefit of a plea agreement, Your Honor,
4 is in essence obviously to narrow the facts for both the
5 government and the defense. That's part of the reason why we
6 engage in a plea agreement. Otherwise, Your Honor, what
7 would be the point in this case? I would just plead my
8 client straight up if essentially all the -- excuse me, if
9 all the relevant conduct could come in.

10 And I --

11 THE COURT: As I understand it, the government's
12 bottom line in its response is that it is seeking by way of
13 sentence in this case a low end guideline sentence as I
14 believe they bargained for in the plea agreement. Am I -- am
15 I correct in that regard?

16 MR. BOULWARE: That's correct.

17 THE COURT: It's not seeking to deviate from that.
18 It's using the reference to any additional facts only or
19 attempting to only insofar as it would be responsive to an
20 argument that a sentence should be below that, to some
21 degree?

22 MR. BOULWARE: That's correct, Your Honor. And my
23 response to that would be -- would be this again, Your
24 Honor.

25 There are arguments they could raise that don't

1 require them to bring up additional relevant conduct and this
2 Court has heard them on numerous occasions. The fact that my
3 client's personal circumstance may not necessarily be
4 extraordinary enough to outweigh what would be the other
5 factors in the 3553. I mean the Court knows that there are
6 multitude of arguments that can be raised to negate what were
7 essentially my arguments. Basically, Your Honor, it wasn't
8 that these weren't the facts, it was let's look at the whole
9 picture. There -- you know I'm not going to raise them all
10 here, but there are lots of arguments that can be raised that
11 don't require bringing up additional relevant conduct outside
12 of our agreement to negate that. And the Court has heard
13 those before and has actually ruled on those before because
14 I've been before the Court where the Court has essentially
15 said, I hear what you're saying about your client but there
16 are important facts here, Your Honor.

17 So -- and I think the most important factor here,
18 Your Honor, so the Court can understand is that that's not
19 what we understood. So if that's not what I understood, Your
20 Honor, that's not what my client understood the agreement to
21 be. And again, I'm not -- I'm not accusing, Your Honor, of
22 Mr. Schiess of intentionally engaging in a breach of the
23 contract but nonetheless, Your Honor, it violates what we --
24 I, my client understood the contract to be what we -- under
25 what we understood the agreement to be, Your Honor. And

1 that's why we specifically negotiated the fact section and
2 that's what I went over, Your Honor, with my client.

3 So part of it is also just -- also her
4 understanding, Your Honor, which I have confirmed with her.
5 But it was also my understanding. I mean the reason why I
6 know it's her understanding, Your Honor, is because it was my
7 understanding.

8 THE COURT: All right.

9 MR. BOULWARE: I mean -- so.

10 THE COURT: All right. Well, let me hear from Mr.
11 Schiess.

12 Mr. Schiess.

13 MR. SCHIESS: Your Honor, there were no side
14 agreements. There were no agreements to facts that were not
15 stated to the Court. There were no agreements that were not
16 kept out of the plea agreement.

17 The plea agreement specifically says that. On page
18 14, the very last paragraph in the section encaptioned,
19 "Additional Acknowledgments."

20 "This plea agreement resulted from an arms
21 length negotiation in which both parties bargained
22 for and received valuable benefits in exchange for
23 valuable concessions. It constitutes the entire
24 agreement negotiated and agreed to by the parties.
25 No promises, agreements or conditions other than

1 those set forth in this agreement have been made or
2 implied -- implied by the defendant, defendant's
3 attorney or the United States, and no additional
4 promises, agreements, conditions shall have any
5 force or affect unless set forth in writing and
6 signed by all parties or confirmed on the record
7 before the Court."

8 I did not have an agreement with him that would
9 limit my argument to those facts if and when he decided to
10 file a motion for departure below the low end of the
11 guideline range. We had a back and forth on what the facts
12 would be for the purposes of supporting the guilty plea and
13 for the purposes of supporting a recommendation for low end.
14 Mr. Boulware went beyond that by filing his motion for 2255
15 -- or excuse me, 3553.

16 Now I think what's helpful here is that when he's
17 talking about what I can or can't or should or shouldn't
18 argue, a couple of things to note. Number one, when he opens
19 the door with his 3553 argument, he opens the door. There's
20 no limitation other than what's fair, lawful, and appropriate
21 by the plea agreement and by the rules of the Ninth Circuit
22 and this Court.

23 My arguments were within the Ninth Circuit, the
24 plea agreement, and the rules of this Court. He cannot sit
25 back and say, I framed the issue so strategically that I tied

1 the government's hands. He can't do that. In fact, his slip
2 of the tongue in his argument to you a few minutes ago is
3 revealing. He said, when we makes the argument the
4 government should say let's look at the whole picture. That's
5 right, the whole picture about not only what she does to her
6 family and her community but what she's done to these victims
7 and to other victims as well. That's the whole picture.

8 The plea agreement is not ambiguous as to terms.
9 There's no conflict between the provisions that deal with the
10 facts to support a guilty plea and the provisions that state
11 what I can do in response to a motion to depart. Those are
12 separate provisions, separate purposes without a conflict.

13 And finally Mr. Boulware said, if he knew that I
14 was going to be making these arguments he would have made
15 different arguments or mitigating arguments. There is
16 nothing that stopped him from filing a response to my
17 sentencing memorandum setting forth mitigating facts. There
18 is nothing that has stopped him in the last two months, since
19 the continuation of this hearing, to identify mitigating
20 facts. There's nothing to stop him from standing on his feet
21 in a couple of minutes and identify mitigating facts. So
22 he's not deprived of -- that he hasn't been deprived of that
23 opportunity. He's not deprived of it now, so there's nothing
24 unfair both from the plea agreement and from the effect of
25 the plea agreement.

1 THE COURT: All right. Well, look here's the way I
2 view it. I'm going to deny the motion to withdraw the plea
3 of guilty at Document 42. I don't find a violation of the
4 plea agreement in terms of the plea agreement has occurred.
5 The -- as Mr. Schiess just said, the plea agreement is not
6 really ambiguous, it's clear. And I don't think either of
7 the parties or for that matter the Court could be trapped or
8 boxed into a situation where a legitimate issue is raised or
9 fact is raised as I think the defendant appropriately raised
10 in their sentencing memorandum as grounds for a sentence below
11 the guidelines. I don't find that would constitute any
12 violation of the agreement and similarly, I don't find the
13 government responding to that would constitute a violation
14 and certainly nothing that would warrant a withdrawal of the
15 plea.

16 So we will proceed with the sentencing and let you
17 all argue what the consequences should be in your view under
18 3553 of Title 18.

19 Ms. Hilton, on the 9th of November of last year you
20 entered a plea of guilty to the charge in Count Two of the
21 indictment, that charge being wire fraud, a violation of 18,
22 U.S. Code, Section 1343. At this time I adjudicate you
23 guilty of that offense and I want to remind you that to the
24 extent you've not waived your right to do so, any appeal of
25 sentencing findings would have to be started by filing a

1 notice of appeal within 15 days of this date. Do you
2 understand that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Now the Department of Probation
5 prepared a revised presentence report. It's actually been
6 through a couple of revisions but the most recent was on
7 April 11th, 2013. I want to make sure the parties have read
8 the most recent version and correct any factual errors.

9 Mr. Schiess, are you aware of any factual errors in
10 the most recent presentence report revision?

11 MR. SCHIESS: No, Your Honor.

12 THE COURT: And, Mr. Boulware, are you?

13 MR. BOULWARE: No, Your Honor.

14 THE COURT: And, Ms. Hilton, did you read the
15 updated presentence report?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And did you see any factual mistakes in
18 it? Biographical information, anything else that was not
19 accurate?

20 THE DEFENDANT: Not that I'm -- I did not catch
21 anything, Your Honor.

22 THE COURT: Okay. All right.

23 The Department of Probation has calculated the
24 offense level at a level 16, Criminal History Category is a
25 Category I, so under the advisory guidelines that provides

1 for an applicable range between 21 and 27 months. The
2 Department of Probation recommends the low end sentence of 21
3 months.

4 The supervised release range is one to three years.
5 Probation has recommended a three-year term on standard
6 conditions and certain special conditions.

7 The fine range is \$5 to \$50,000. No fine is
8 recommended.

9 Restitution of \$480,490 -- \$400.97 [sic] is
10 recommended and of course the mandatory penalty assessment of
11 \$100.

12 Both parties have filed sentencing memoranda which
13 pretty much set forth their positions regarding sentencing.
14 The defendant's at Document 37 and filed March 13th. The
15 government's is filed March 15th at Document 38 which were
16 prior to the most revision of the presentence report
17 obviously, but you can supplement that if you wish to with
18 any argument you wish to make.

19 But let me start with you, Mr. Schiess, as to the
20 government's specific position regarding what the appropriate
21 sentence is in Ms. Hilton's case.

22 MR. SCHIESS: Thank you, Your Honor.

23 Your Honor, we ask the Court to sentence Ms. Hilton
24 to the low end of the guideline range as we promised her that
25 we would recommend. Our recommendation is a sound one. It's

1 based upon both the facts of the case that are in -- unique
2 to her in some ways and common to the scheme to others.

3 In part it's the uniqueness that justifies the 21-
4 month sentence. And the other circumstances that I set forth
5 in the sentencing memorandum, then let me address each parts
6 of those if I may?

7 During this time in our economy and in our society
8 it was common for people to commit mortgage fraud. The Court
9 has heard a number of cases and sentenced a number of people
10 so you know the pretty common scheme that was going around.
11 What sets Ms. Hilton's conduct apart from the others is not
12 the number of transactions, not the dollar amounts, but who
13 her victims were. She had a special relationship with these
14 people. They worked for her. They worked for her making \$12
15 to \$15 an hour doing her household chores, her domestic work
16 or whatever business tasks of being a runner for her as she
17 was carrying out her investments. One of them was in her
18 70s, the other was in her mid-40s. She was recently divorced
19 and she was going through the difficulties, the emotional
20 instabilities of those events.

21 What Ms. Hilton did didn't begin with them as
22 victims. What she did was persuaded other people to loan her
23 money and then gave them a deed. Some document, a security
24 interest against these two ladies victims' homes. And those
25 people, other investors, the well-heeled people, the people

1 who had money wanted their investments back and so she needed
2 to find a way to payback the 70 year old and the 40-something
3 year old recently divorced mother. So she then put the
4 pressure on them to refinance their homes. And she took that
5 money under promises that she would invest their money in a
6 good deal for them that would make them significant money and
7 she paid off the other victims.

8 And so it was a Ponzi Scheme. It was a
9 sophisticated scheme. It was a scheme that took steps along
10 the way that somebody with her confidence and her competence,
11 Ms. Hilton's confidence and competence and ability to
12 convince people, particularly people who are in a special
13 relationship. Not only an employee but in emotional
14 dependency at times.

15 So she took advantage of those people which
16 distinguishes her from typical mortgage fraud case that was
17 going on in a lot of ways. And not only that, as I pointed
18 out, then she went to the mother of the 40-something year
19 old, who was in her late 70s, and convinced her to refinance
20 her home. There were no false statements in the loan
21 application but there were false representations about here's
22 how I'm going to make sure this is good and solid, you're in
23 a good investment. Leading people to believe that when
24 they're on a low income, small pension making a small income
25 in terms of, you know, part-time dollar an hour, that with

1 her experience, you can trust me. You can believe me. I'm
2 going to take care of you. And that's what she did, took
3 advantage of that relationship.

4 And that, Your Honor, is -- justifies, justifies a
5 21 month sentence for these people with their age and their
6 positions in life. Two of them have lost their homes in
7 foreclosure. One of the lady in their 70's mother who is the
8 relevant conduct. The 40-something year old. The 70-year-
9 old has been fighting the battle against the lender now and
10 so we don't know the outcome yet to see what the result of
11 their civil lawsuit is, but the emotional difficulties that
12 she's had to through the fraud perpetrated by the defendant.

13 Now I told the Court that -- of the distinguishing
14 characteristics of the defendant's conduct. I also told the
15 Court that there was commonality. It was in someways similar
16 to what a number of other mortgage fraudsters have been doing
17 in Nevada since '06, '07.

18 At the last -- at the original sentencing hearing
19 set for a couple months ago, defense counsel asked for a list
20 of the names of the defendants who have been sentenced and
21 the case numbers. I provided him not only that list but I
22 provided him more. I provided him the name of the
23 defendants, the disposition, whether they received 5K or Rule
24 35, the sentence they received, and the forfeiture and the
25 restitution amount. Now -- and the list totals when I -- when

1 we comprise the list which I have to tell the Court was just
2 after that sentencing so it may have been a couple of people
3 sentenced since then, but there were 131 people who have been
4 sentenced. There's over 200 who have been charged and so the
5 remaining 68 or 70 are pending sentencing, pending trial or
6 pending resolution.

7 The sentences that these people have received have
8 been across the board.

9 THE COURT: Of course.

10 MR. SCHIESS: From people who received probation,
11 when they received a 5K or no 5K they got probation or time
12 served. To people who are very similarly situated to them in
13 their conduct who received 27, 33 months. In some situations
14 more but within that range mostly.

15 And so, you know, we can say yes there are people
16 who are at the low end, probation. Yes, there are people at
17 the high end, which really puts the Court in the position of,
18 I've got to look at this person individually meets [sic] facts
19 and I submit to the Court that the uniqueness of her conduct,
20 of victimizing people with a special relationship who are
21 older, who are more fragile in their lives sets her apart and
22 justifies and cries out for a sentence of 21 months and would
23 meet the needs of the sentencing considerations under 3553 and
24 the others. You know a sentence that will send to her the
25 message, will send to the community the message, will be no

1 more than necessary to achieve the results. All those
2 factors, I think would be -- I know and I argue would be
3 effect -- would achieve the 21 months when the Court looks at
4 the uniqueness and special relationship she had with people,
5 her victims.

6 THE COURT: All right. And you submitted a
7 restitution list for Deutsche Bank and Signature Group
8 Holdings?

9 MR. SCHIESS: I did and that's consistent with the
10 amount in the --

11 THE COURT: 380 -- 480,000 roughly.

12 MR. SCHIESS: Yes. And then I've also submitted to
13 the Court the order of forfeiture --

14 THE COURT: Correct.

15 MR. SCHIESS: -- in that amount as well. The more
16 [sic] to forfeiture amount has been negotiated. The
17 restitution amount comprises -- well, that's what it is that
18 we've negotiated the figures.

19 THE COURT: All right.

20 MR. SCHIESS: Thank you, Your Honor.

21 THE COURT: All right. Thank you, Mr. Schiess.

22 Mr. Boulware, why don't you and your client come on
23 up.

24 MR. SCHIESS: Before you start to [unintelligible]
25 to see if I'm being corrected here.

1 THE COURT: I'm sorry?

2 MR. SCHIESS: Oh, thank you. Sometimes the voices
3 over my shoulder tell me if I misspoke and this time they
4 didn't tell me that.

5 THE COURT: Oh, okay.

6 MR. BOULWARE: No.

7 THE COURT: All right. Donna, here's that
8 restitution list for your records.

9 MR. BOULWARE: Your Honor, for the record we're not
10 opposing the forfeiture amount and so long as we can confirm
11 that the restitution's going to the actual last victims,
12 pursuant to the Ninth Circuit decision, Your Honor, I don't
13 think we'll have an opposition to that either.

14 THE COURT: Right. The two banks or --

15 MR. BOULWARE: Yeah.

16 THE COURT: -- the -- the holding group of the
17 bank.

18 MR. BOULWARE: Your Honor, obviously we do not
19 agree or concede any of the facts that Mr. Schiess just set
20 forward. I think the only thing that we would agree, Your
21 Honor, is the fact that these women worked with my client.
22 And that's an important fact because distinguishing is not
23 for the reasons Mr. Schiess says, Your Honor.

24 My client was a high risk investor, Your Honor, in
25 properties and in other ventures. She had been doing this

1 for years, Your Honor. These women were well aware of it.
2 They worked with her.

3 It was -- it was not as if they believed that she
4 was a stockbroker or a mutual fund investor. They knew, Your
5 Honor, what my client did was lend out money for high risk
6 ventures with the hope of a significant return. That had
7 been her business, that had been part of her business. They
8 had worked with her on projects related to that.

9 Now, were they ones who would buy the investments?
10 No. Am I suggesting to the Court that they were part of
11 negotiating the financial terms? No.

12 What I am saying, Your Honor, is that these were
13 individuals who understood the nature of the risk of the
14 investment. And let's be clear about what they did receive.

15 THE COURT: Well, what were the investments that
16 were made with their money on their behalf?

17 MR. BOULWARE: Your Honor, the understanding again
18 is that they would be -- Ms. Hilton engaged in a variety,
19 Your Honor, of high risk investments involving lending.

20 THE COURT: Right.

21 MR. BOULWARE: And so --

22 THE COURT: But here what -- the money that was
23 derived from the financial --

24 MR. BOULWARE: Would be part of -- would be a part
25 of -- she was involved in several projects at that time.

1 Part of it would be involved in those types of investments,
2 Your Honor. And again, I'm not going to say what exactly the
3 words were cause I can't speak to that. What I can say is my
4 argument is based upon the idea that they understood that
5 their money was going to be involved and mixed in with other
6 investments in terms of her lending to high risk investors or
7 high -- on high risk projects. So --

8 THE COURT: Well, but -- but were in fact the
9 monies that she obtained from the employee victims from the
10 refinancing of their homes used to pay back or return
11 investments demanded by other investors?

12 MR. BOULWARE: There's a two-part answer to that
13 question. Part of the money, Your Honor, was used -- was
14 actually used to pay off all of their debt. So all their
15 credit cards and all of that was actually paid off with the
16 initial amount of money, which was part of the agreement.

17 THE COURT: Part of the employees?

18 MR. BOULWARE: Yeah, the investor. In this case
19 what the government calls the victims, these individuals --

20 THE COURT: All right.

21 MR. BOULWARE: -- their personal debt --

22 THE COURT: Okay.

23 MR. BOULWARE: -- was paid off and they received
24 some additional money out of that. And, yes, some of the
25 money from that then went to payoff some of the debt that Ms.

1 Hilton had.

2 Now, the reason why I say that that's part of the
3 investment, Your Honor, is that part of her ability to invest
4 money was the liquidity which she had. So obviously -- and
5 that's why I say understanding what the nature of her
6 business is helps to understand why simply her paying off her
7 debt isn't in and of itself an investment because increased
8 liquidity for her allows her to be able to loan money on
9 other projects which is what she was doing.

10 So it's not as if it's a Ponzi Scheme, Your Honor,
11 when a -- when and a -- when someone who is actually lending
12 money gets increased liquidity, that increased liquidity can
13 be used for other projects which would be used to pay back
14 the investment.

15 THE COURT: Well, the term Ponzi Scheme can be
16 thrown about pretty easy but isn't in fact the use of monies
17 drawn from third, fourth, and fifth generation investors to
18 pay back first and second generation investors or the returns
19 on their investment precisely what the kind of Ponzi Scheme
20 involved originally and -- and --

21 MR. BOULWARE: Usually, Your Honor, it does when it
22 -- is in the context of return on specific services. So in
23 other words, if I am saying I'm buying stock and you're going
24 to get a return on the stock and then I'm actually not buying
25 the stock but I'm paying people with other money to say

1 that's the yield from the stock, that would be a Ponzi Scheme.
2 But when my business is lending in liquidity, like that is
3 different because obviously in that instance the person is
4 getting paid off and the other people are getting paid off
5 because part of the business is getting paid off from the
6 investment. As for example, a venture capitalist or angel
7 investor, they get paid out simply in cash. They don't get
8 paid out in services. They don't get paid out in property.
9 They get paid out in money.

10 And so in this instance, Your Honor, I think that's
11 an important distinction. It's not as if there was a promise,
12 and that's why I say, Your Honor, about mutual funds or some
13 other type of fund or some other we're going to invest in,
14 you know, an oil well or something like that. This was an
15 investment in her business and terms of making investments.
16 That is what she did. And so I think that distinguishes her
17 and -- from what Mr. Schiess calls a Ponzi Scheme because it
18 wasn't as if there's a promise that she would get a yield on
19 a particular investment that would have like 5 or 10 percent.
20 The idea was that they would give her this money and she
21 would continue to invest, as she had been investing, to make
22 money.

23 And the other thing, Your Honor, let's be clear,
24 she had in fact been making lots of money for her clients up
25 to this time. So it's not as if it was just steadily money

1 flowing out the whole time, Your Honor. She had made
2 investments in money for people and that's part of the reason
3 why these women invested with her. They could see the money
4 that she was come -- that she was bringing in. I mean they
5 wouldn't have invested with her and working with her, and
6 people who were aware of her finances had they not known that
7 in fact that she was successful in what she was doing.

8 Now, Your Honor, and she made promises to them and
9 she made -- even in the statements in the discovery show,
10 Your Honor, that the women still believed in her and believed
11 that she was going to try to pay them back and in fact, she
12 did. Your Honor, my client herself went completely bankrupt
13 in this whole process. She lost all her money. She lost --
14 she doesn't have anything. She doesn't have a job. They --
15 she's dependent upon her husband's work but she had been
16 working herself involved in very significant and high risk
17 ventures. So it's not as if they paid and she -- she's
18 living in a large house and driving expensive cars. She has
19 lost everything with them, with her business. Her business
20 is now defunct and essentially has no assets.

21 And so I think it's important because these were
22 not, Your Honor, vulnerable victims. These were people as a
23 result of working with Ms. Hilton who are intimately familiar
24 with both the success that she had had as an investor and how
25 she made her money. They did not think that it was coming

1 from other certain types of investments. And, Your Honor,
2 they understood that there was risk associated with that and
3 they understood that she would be with them if the risks
4 didn't work, which she was and as a result her business went
5 belly up.

6 And that's why, Your Honor, you see the statements
7 from the individuals in discovery talking about how the fact
8 that they had worked and they had tried. And in fact, Mrs.
9 Hilton, as I said, Your Honor, had paid off debt for some of
10 these individuals and had supported them and continued to try
11 to support them as best she could until all her money ran out
12 as well.

13 Your Honor, my client has accepted responsibility
14 for the fact that this money is not fair [sic] and that there
15 were misdeeds here. I am not trying to say to the Court that
16 she should get a free ride. I would not say that to the
17 Court.

18 What I'm saying, Your Honor, is that my client, as
19 a businesswoman, as a mother, as someone who was other than
20 with just the defense conduct should get the benefit of the
21 balance of all that time there [sic]. That she has no prior
22 convictions. That she worked with these women. That as the
23 Court can see from the letters, she's done very good things
24 in the community, Your Honor. And that's why, Your Honor, I
25 try to reiterate that because again the guidelines don't take

1 that into consideration and I know that sometimes it's easy
2 for us to gloss over that. Yeah, but for someone like Ms.
3 Hilton, a felony conviction is serious. I mean you and I day
4 in and day, Your Honor, we do these things on a regular basis
5 and I think we can become a little bit jaded, not that we
6 should, by what a felony conviction means to people.

7 But as you speak, particularly when the guidelines
8 talk about this, to someone who has never had a conviction,
9 let alone a felony conviction in her life. And that's why I
10 outlined in my memo, Your Honor, particularly in the state
11 where she lives what that -- what that's like, that life is
12 like. Essentially almost living with the scarlet letter of
13 an "F" across her chest given the fact that you have this
14 conviction.

15 I'm not asking the Court to give her a free pass.
16 What I'm asking the Court to do is essentially give her a
17 balanced sentence, Your Honor, taking everything into
18 consideration.

19 And the one thing I would address with respect to
20 what Mr. Schiess said is, there are people, Your Honor, who
21 have received probation or home confinement during the
22 context of this sting that they've did on mortgages. And
23 what I would say, Your Honor, is why I think in this
24 instance, Your Honor, there is a reason for that is what I've
25 outlined before. That these were individuals who are not in

1 anyway snookered, who understood that there were risks. They
2 cut corners but they cut them together.

3 Your Honor, let's be clear, the quote, unquote,
4 "victims" in this case in terms of the loan documents, they
5 were a part of that process. It's not as if they didn't
6 know, Your Honor, that corners were being cut. Legal corners
7 were being cut for them to get that money. It's not as if
8 they didn't know, Your Honor, that that information had been
9 mischaracterized for them to get the money. And they didn't
10 complain, Your Honor, when their debts were paid. They
11 didn't complain when they received the extra money initially
12 from the payoffs, right?

13 Mr. Schiess has categorized them as people who were
14 victimized. Well, wait, Your Honor, that is not -- a victim
15 is someone who's unaware. They were not unaware.

16 Now the government makes a strategic decision in
17 all these cases, Your Honor, not to charge straw buyers.
18 They have never charged, as far as I know, a pure straw buyer.
19 Despite the fact that straw buyer is an intimate part of the
20 conspiracy, if the conspiracy cannot actually be effective in
21 loan cases without straw buyers being charged and that for
22 the most part they don't charge them. But we should not
23 forget that the women who were involved in this investment,
24 Your Honor, were fully aware of the fact that the legal
25 corners that were being cut were being cut. And that my

1 client is the only one facing the consequences for that.
2 They have not been charged, not at all, despite the fact that
3 they participated in the bank fraud.

4 So I think that that's what I mean, Your Honor,
5 when I say the entire picture and entirety of sentencing. I
6 ask the Court to consider all of that in the context of these
7 cases and not simply what's outlined in the PSR and not
8 simply what's outlined in the government's memorandum.

9 Thank you.

10 THE COURT: All right. And come on -- stay up here,
11 Mr. --

12 MR. SCHIESS: Your Honor, before you do that may I
13 respond to the facts that he's saying? Because --

14 THE COURT: Yeah. Go ahead.

15 MR. SCHIESS: Your Honor, first he says that they
16 knew these were high risk investments and where the money was
17 going. That contradicts the plea agreement, the very facts
18 that we negotiated. The facts on the -- page 4 says:

19 "It was -- the defendants persuaded them to
20 refinance their homes and invest the money they
21 obtained from refinancing with defendant by
22 defendant promising to invest their money for them
23 when the defendant then and there well knew that she
24 would use the money for her personal benefit."

25 Not an investment. She lied to them. Even if they

1 were sophisticated, she told them she was going to invest it.
2 She didn't. She did it for her own personal to payback
3 people that she snookered in the first place to get money who
4 were pressuring her to say, hey, where's the money?

5 THE COURT: All right. I understand what's in the
6 plea agreement.

7 MR. SCHIESS: Number two, he says that these people
8 were sophisticated. They were her housekeepers. They
9 weren't involved in her business. They were her housekeepers
10 or they were doing her runner work. They were not
11 sophisticated. A 70-year-old lady who lived on a pension who
12 had a regular job didn't understand what was going on.
13 Forty-year-old mother who's -- was not in that business world
14 didn't understand what was going on. It's because of their
15 relationship with her. They trusted her.

16 In terms of paying off their credit. Yes, she took
17 some of the money to pay the credits so they could make that
18 part of their loan applications to qualify. The rest of the
19 money goes into her pocket, not to investments for people
20 that trusted her.

21 THE COURT: Come on up, Mr. Boulware, with your
22 client because I want to hear anything that Ms. Hilton wishes
23 to say on her own behalf. We've heard from everybody else
24 but, Ms. Hilton, is there anything that you wish to say?

25 MR. BOULWARE: Your Honor, can I just have a moment,

1 please?

2 THE COURT: Yeah.

3 MR. BOULWARE: Thank you.

4 (Off-record colloquy between Counsel and Defendant)

5 MR. BOULWARE: Your Honor, my client does not wish
6 to make a statement.

7 THE COURT: All right. You're not required to, I
8 just wanted to make sure you had the opportunity.

9 Well, Ms. Hilton and counsel, first of all, I don't
10 find this to be some aberrational kind of case. Each case is
11 individual in terms of the individual defendants, the
12 circumstances, and as a result I'm not surprised there's a
13 wide array of sentences imposed for similar kinds of cases:
14 fraud cases, mortgage fraud cases, and the like. But each
15 case has to rise or stand on its own and I think this case
16 does and I think that the plea agreement that was negotiated
17 and the guideline range that was focused on by the Department
18 of Probation is very useful in determining an appropriate
19 sentence. That is a sentence which is sufficient but not
20 greater than necessary to meet the factors under 3553 of
21 Title 18.

22 And we all know them and we begin by looking at the
23 guidelines and the guidelines serve a variety of purposes.
24 One of the, perhaps the most useful I think in their advisory
25 nature is avoiding disparate sentences. They give a

1 benchmark that a Court can look to as providing some
2 assurance that a sentence which does not vary or depart
3 wildly from that guideline range is probably going to avoid
4 the plague of disparity.

5 This is a case that is about fraud. It's just that
6 simple. It's making false representations to induce people
7 to part with something of value. Money in this case. And
8 here the money, either entirely or at least portions of it,
9 were obtained from these victims to convert the use of the
10 defendant. I'm not going to spend time talking further about
11 Ponzi Schemes or even sophistication of the victims. There's
12 no enhancement proposed under the guidelines for vulnerable
13 victims in this case. They are victims and I can't look into
14 their minds any more than I can look into anybody else's mind
15 to know what they knew or what they understood. They may be
16 as innocent as lambs. They may be sophisticated as some of
17 the most savvy Madoff investors. I don't know. I don't
18 think it really matters at the end of the day.

19 Because the defendant has to be sentenced for her
20 conduct. What she intended. What she did. And she stands
21 convicted of a serious crime of wire fraud and that carries a
22 very severe criminal penalty of up to 20 years in prison. Of
23 course, there are a lot of factors that weigh in favor of a
24 more lenient sentence for the defendant. Her absence of
25 prior criminal record. They are many things, just like every

1 person who comes before me for sentencing. Everyone, it's
2 not one dimensional and many facets to human beings. They've
3 got families. They've got things that they've done in their
4 community and particularly so of those who are found guilty
5 or plead guilty to white collar type of crime, to fraud type
6 of crimes.

7 Mr. Boulware's right, a felony conviction is
8 probably more meaningful to you or to any one of us in the
9 room than it is to someone who's been in and out of prison
10 since they were very young and drug cases and things of that
11 sort. It doesn't have the stigma perhaps for them that it
12 does for you in your community where you live and the circles
13 that you have moved about for many years, just as it would
14 for us. But that's part of the importance of deterrence of
15 influencing people not to violate the law.

16 And I have to fashion a sentence that reflects the
17 seriousness of the crime and this is a serious crime
18 involving fraud and involving a lot of money lost. It's a
19 small piece of a much larger picture that has become simply
20 ubiquitous in our society. Not just this community but
21 throughout the country to promote respect for the law. How
22 do you promote respect for the law if there isn't a penalty?
23 If there aren't consequences for the wrongdoing that is done
24 by someone who commits a fraudulent crime? To provide just
25 punishment. You know, 21 months versus 25 months versus 18

1 months. We could debate that all day long. The only person
2 it probably really matters to is you. You're the person
3 that's facing the sentence, and your family, they're beings
4 sentenced too. That's the penalty that's being visited and
5 that's the punishment. I think that guidelines do
6 accommodate that.

7 To avoid adequate deterrence to criminal conduct by
8 you and by others, I doubt seriously much has to be done to
9 deter you from further criminal conduct. I would think by
10 now you've woken up and smelled the coffee and realize this
11 is just plain sad for you personally, for your family, and a
12 tragic circumstance that you find yourself in. You put
13 yourself there. You're responsible for it. I doubt
14 seriously that you would engage in anything like this in the
15 future, Ms. Hilton, but perhaps others would be deterred to
16 protect the public from further crimes.

17 Again, I don't view you as a recidivist who's apt
18 to go out and commit new crimes of any kind. I'd be
19 surprised if you did. There's no real element of education
20 or training but to avoid sentencing disparities as I
21 mentioned, I think all of those are accommodated by the
22 recommendation of the Department of Probation. You were a
23 person in a position of financial trust. Not just as a loan
24 officer but investor. You persuaded these individuals to
25 refinance their houses in which they did have substantial

1 equity; under a promise that you would invest the money and
2 under false promises that you would invest it -- not that you
3 would convert it to your own use and for your own benefit,
4 which is in fact what occurred.

5 Don't know where the money is. I expect it's
6 gone. You'll have to do your best to repay it while on
7 supervision.

8 BUT I THINK THAT IN THIS CASE THE LOW END GUIDELINE
9 OF TWENTY-ONE (21) MONTHS IS PRECISELY THE APPROPRIATE
10 SENTENCE AND THAT'S THE SENTENCE THAT WILL BE IMPOSED.
11 FOLLOWED BY THREE (3) YEARS OF SUPERVISED RELEASE UNDER THE
12 STANDARD TERMS AND CONDITIONS AND THE FOLLOWING SPECIAL
13 CONDITIONS.

14 FIRST THAT YOU PAY RESTITUTION OF FOUR HUNDRED AND
15 EIGHTY THOUSAND FOUR HUNDRED DOLLARS AND NINETY-SEVEN CENTS
16 (\$480,400.97) .

17 SECOND, THE MANDATORY PENALTY ASSESSMENT OF ONE
18 HUNDRED DOLLARS (\$100) . THAT WILL BE PAYABLE AT A RATE OF
19 ONE-THIRD (1/3) OF YOUR EARNINGS WHILE IN CUSTODY AND
20 THEREAFTER TEN (10) PERCENT OF YOUR GROSS EARNINGS UPON
21 RELEASE.

22 SECOND, THAT YOU NOT -- OR THIRD THAT YOU NOT
23 POSSESS ANY FIREARMS, DANGEROUS WEAPONS OR EXPLOSIVE DEVICES.
24 BY VIRTUE OF YOUR FELONY CONVICTION YOU SIMPLY CAN'T POSSESS
25 SUCH THINGS.

1 FOURTH, THAT YOU BE SUBJECT TO THE WARRANTLESS
2 SEARCH OF YOUR RESIDENCE, PERSON, PROPERTY, AND AUTOMOBILE BY
3 THE DEPARTMENT OF PROBATION TO VERIFY YOUR COMPLIANCE.

4 FIFTH, THAT YOU BE RESTRICTED FROM ENGAGING IN
5 EMPLOYMENT, CONSULTING OR ASSOCIATION WITH ANY MORTGAGE REAL
6 ESTATE BUSINESS OR BANKING BUSINESS FOR A PERIOD OF THREE (3)
7 YEARS.

8 SIX, THAT YOU BE PROHIBITED FROM INCURRING NEW
9 CREDIT CHARGES, OPENING LINES OF CREDIT OR NEGOTIATING AND
10 CONSUMMATING FINANCIAL CONTRACTS WITHOUT THE APPROVAL OF THE
11 DEPARTMENT OF PROBATION.

12 SEVEN, THAT YOU PROVIDE THE DEPARTMENT OF PROBATION
13 WITH ACCESS TO ANY FINANCIAL INFORMATION THEY REQUEST OF YOU.

14 AND EIGHT, THAT YOU REPORT TO THE DEPARTMENT OF
15 PROBATION TO COMMENCE SUPERVISED RELEASE WITHIN SEVENTY-TWO
16 (72) HOURS OF YOUR RELEASE FROM CUSTODY.

17 Now Pretrial Services indicates you've complied
18 with all conditions. I will allow you to report to the
19 facility designated by the Bureau of Prisons. We'll set that
20 date, this is May 6 so -- Ms. Morgan, what's your
21 recollection as to how long it's taking for designation? Is
22 it 45 or 60 days?

23 PROBATION OFFICER: I've heard anywhere, Your Honor,
24 between 45 and 90 days.

25 THE COURT: Okay. We better make it 60 to be safe.

1 We'll make it July 10th, 2013 at 12 o'clock noon Pacific
2 Time.

3 Is there a request for a specific either facility
4 or geographic location? Would it be in Texas? Would that be
5 the request?

6 MR. BOULWARE: A facility near Houston, Texas, Your
7 Honor.

8 THE COURT: As near Houston as can be designed.
9 They do have facilities in Texas that I'm sure can
10 accommodate that or at least near Houston. Might be in
11 Louisiana. I'm not sure, but.

12 All right. Anything further at this point --

13 MR. SCHIESS: Yes, Your Honor.

14 THE COURT: -- on behalf of the government or the
15 defense?

16 MR. SCHIESS: Yes. The order of forfeiture, will
17 the Court on the record that you're signing it and making it
18 a part of the judgment?

19 THE COURT: It has been signed. It will be made
20 part of the judgment of today's -- today's proceedings.

21 And were there other counts to be dismissed, Mr.
22 Schiess?

23 MR. SCHIESS: Yes. I'm going to move to dismiss
24 the remaining counts.

25 THE COURT: Remaining counts will be dismissed as

1 part of the plea agreement.

2 Ms. Morgan.

3 PROBATION OFFICER: Your Honor, we would ask that
4 the mandatory condition of the drug testing, annual drug
5 testing be suspended based upon the belief that the defendant
6 does not have a substance abuse issue. And then if the
7 record may reflect she's being handed a copy of her
8 conditions of supervision?

9 THE COURT: Yes, the record will so reflect. And I
10 will suspend the drug testing requirement. All right?

11 MR. SCHIESS: Your Honor, if the -- Ms. Hilton has
12 not been the Marshal's when she entered her plea to have her
13 fingerprints and be processed, would the Court order her to
14 do that?

15 THE COURT: Oh, I thought -- she was not you say?

16 MR. SCHIESS: I don't know and I'm just covering
17 the bases in the --

18 PROBATION OFFICER: Your Honor, when I prepared the
19 presentence report she had not been assigned a Marshal number
20 nor did we have a photograph --

21 THE COURT: Oh. Oh, okay.

22 PROBATION OFFICER: -- so I don't believe she has
23 actually processed.

24 THE COURT: Well, we need to do that right away, so.

25 MR. BOULWARE: I'll have her do that --

1 THE COURT: Why don't you go on downstairs right
2 now and get that accomplished? It won't take long, just a
3 matter of getting photographed and providing some information
4 and printed and that's -- that's it.

5 MR. BOULWARE: Your Honor, one -- the one thing that
6 I would ask is for the Court to waive the interest on the
7 restitution while my client is in custody. Obviously while
8 she's in custody there is no ability for --

9 THE COURT: Yeah. No, it's routinely requested and
10 I routinely reject that. No, I think it's an obligation that
11 should be subject to the interest bearing consequence so that
12 would be denied.

13 MR. SCHIESS: And -- I was taking pretty good notes.
14 Did the Court advise her of her right to appeal?

15 THE COURT: Yes.

16 MR. SCHIESS: Thank you.

17 THE COURT: All right. Thanks everybody.

18 MR. BOULWARE: Thank you, Your Honor.

19 THE COURT: You can be excused and I'm going to
20 remain in session.

21 PROCEEDINGS CONCLUDED AT 3:21:45 P.M.

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CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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